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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

HIRL, JOSEPH P

ART UNIT

PAPER NUMBER

2121

DATE MAILED: 10/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/933,782

Applicant(s)

VAN OVERVELD, CORNELIUS
WILHELMUS ANTON

Examiner

Joseph P. Hirl

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. This Office Action is in response to an AMENDMENT entered July 21, 2004 for the patent application 09/933,782 filed on August 21, 2001.
2. All related prior office action are fully incorporated into this Final Office Action by reference.

Status of Claims

3. Claims 1-25 are pending.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 1, and 8-15 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The language of the claims raises a question as to whether the claims is directed merely to an abstract idea that is not tied to a technological art, environment or machine which would result in a practical application producing a concrete, useful, and tangible result to form the basis of

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statutory subject matter under 35 U.S.C. 101. In essence, such claims can be implemented using non-technological art techniques, such as pencil and paper.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

7. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Suzuki (U. S. Patent 6,313,745, referred to as **Suzuki**).

Claim 1

Suzuki anticipates maintaining a clothing profile of the user, including inventory of apparel and preferences of the user (**Suzuki**, col 2, lines 10-23), detecting a piece of clothing being selected from the inventory and updating the clothing profile based on said selection (**Suzuki**, col 2, lines 10-23), generating the recommendation for the recommended piece of clothing from the updated clothing profile (**Suzuki**, col 2, lines 10-23) and providing the recommendation to the user (**Suzuki**, col 2, lines 10-23).

Claim 2

Suzuki anticipates a user profiling unit is configured to maintain a clothing profile of the user, including the inventory of apparel and preferences of the user (**Suzuki**, col 2, lines 10-23), one or more sensors that are configured to detect a selected piece of clothing being selected from the inventory, (**Suzuki**, col 2, lines 10-23; Fig. 1), coupled to the database for updating the clothing profile based on the selected piece of clothing

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(**Suzuki**, col 5, lines 18-33; Fig. 1), a recommendation unit that is configured to generate the recommendation for the recommended piece of clothing from the updated clothing profile (**Suzuki**, col 6, lines 57-59), and a rendering system that is configured to present the recommendation to the user (**Suzuki**, col 7, lines 4-9).

Claim 3

Suzuki anticipates determining a list of available pieces of clothing from the inventory (**Suzuki**, col 2, lines 10-23; col 7, lines 4-9), combining plural pieces from the list to form a collection of subsets, the recommendation comprising at least one subset from the collection of subsets (**Suzuki**, col 7, lines 4-7).

Claim 4

Suzuki anticipates the recommendation unit is further configured to eliminate from the collection a number of subsets that are not suitable for a present situation (**Suzuki**, col 6, lines 60-67).

Claim 5

Suzuki anticipates wherein the user profiling unit is coupled to smart card read/write that is configured to maintain the clothing profile stored on a smart card (**Suzuki**, col 5, lines 18-33).

Claim 6

Suzuki anticipates input means for determining a purpose for which the piece of clothing has been selected (**Suzuki**, col 2, lines 25-39), the user profiling unit being further configured to update the clothing profile further based on the determined purpose (**Suzuki**, col 5, lines 18-33; col 8, lines 36-42).

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Claim 7

Suzuki anticipates the input means is arranged to determine the purpose based on an appointment in an electronic calendar (**Suzuki**, col 8, lines 43-57).

Claim 8

Suzuki anticipates presenting a targeted clothing advertisement to a user, comprising obtaining a clothing profile for the user, determining a clothing product that matches the clothing profile, and sending an identifier of the clothing product to the user (**Suzuki**, col 6, lines 60-67; col 7, lines 1-9).

Claim 9

Suzuki anticipates generating a representation of the clothing product using the identifier and rendering the representation to the user (**Suzuki**, col 6, lines 60-67; col 7, lines 1-9).

Claim 10

Suzuki anticipates the clothing profile is obtained by reading the clothing profile from a smart card (**Suzuki**, col 5, lines 19-32).

Claims 11, 16

Suzuki anticipates maintaining an inventory of apparel possessed by the user (**Suzuki**, col 8, lines 43-67; Examiner's Note (EN): record of user's apparel (inventory is maintained), determining one or more subsets of apparel from the inventory suitable for forming the ensemble (**Suzuki**, col 8, lines 43-67; EN: Para 13 applies; subset is formed around past purchases), presenting at least one of the one or more subsets of apparel to the user (**Suzuki**, col 8, lines 43-67; EN: for displays, see Suzuki at Fig. 1).

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Claims 12, 18

Suzuki anticipates determining the one or more subsets suitable for forming the ensemble is based on at least one of a user preference (**Suzuki**, col 8, lines 43-67), current fashion (**Suzuki**, col 9, lines 1-8), a dress code (**Suzuki**, col 9, lines 1-8), and prior selected ensembles (**Suzuki**, col 8, lines 43-67).

Claims 13, 19

Suzuki anticipates determining the one or more subsets suitable for forming the ensemble is based on at least one of; a dominant color of the ensemble (**Suzuki**, col 8, lines 43-67), a color of each apparel in the subset (**Suzuki**, col 8, lines 43-67), a dominant style of the ensemble (**Suzuki**, col 9, lines 1-8), a time of year for wearing the ensemble (**Suzuki**, col 9, lines 1-8), a time of day for wearing the ensemble (**Suzuki**, col 9, lines 1-8), and current environmental conditions (**Suzuki**, col 9, lines 1-8).

Claims 14, 20

Suzuki anticipates determining the one or more subsets suitable for forming the ensemble includes at least one of: applying one or more rules (**Suzuki**, col 6, lines 51-67; col 7, lines 1-9; EN: AR engine has rules), determining one or more distances (**Suzuki**, col 8, lines 43-67; EN: AR engine has distances), determining one or more weights (**Suzuki**, col 8, lines 43-67; EN: AR engine has weights), and modifying parameters used for determining the one or more subsets based on prior user selections (**Suzuki**, col 8, lines 43-67; EN: to one of ordinary skill in the art, the AR engine modifies parameters).

Claim 15

Suzuki anticipates identifying an apparel item that is not in the inventory that would form another subset suitable for forming the ensemble if combined with apparel in the inventory (**Suzuki**, col 8, lines 43-67).

Claim 17

Suzuki anticipates at least some of the apparel includes a tag that identifies the apparel to the inventory system (**Suzuki**, Abstract).

Claim 21

Suzuki anticipates a network interface that is configured to facilitate receipt of advertisements for other apparel (**Suzuki**, Fig. 1; col 8, lines 43-67; EN: Para 13 applies; advertisements is nothing more than representing a product for sale), the processor is further configured to filter the advertisements based on whether the other apparel forms another subset suitable for forming another ensemble if combined with apparel in the inventory (**Suzuki**, col 8, lines 43-67; EN: performed by the AR engine), and the display is further configured to present the another subset to the user (**Suzuki**, Fig. 1; col 8, lines 43-67).

Claim 22

Suzuki anticipates an input device that facilitates a purchase of the other apparel in the another subset by the user (**Suzuki**, Fig. 1; col 8, lines 43-67).

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Claim 23

Suzuki anticipates a smart card read/write device, and wherein the processor is further configured to transfer some or all of the inventory of apparel to a smart card via the smart card read/write device (**Suzuki**, col 5, lines 18-32).

Claim 24

Suzuki anticipates the processor is further configured to transfer one or more user preferences to the smart card via the smart card read/write device (**Suzuki**, col 5, lines 18-32).

Claim 25

Suzuki anticipates the system is further configured to detect an initial selection of a first apparel item (**Suzuki**, col 8, lines 43-67), and the processor is configured to identify the one or more subsets based on this initial selection (**Suzuki**, col 8, lines 43-67),

Response to Arguments

8. Rejection of claims 1 and 8-15 under 35 USC 101 remains. The issue with these claims is centered on a lack of “tangible embodiment in the technical arts”. As written, these claims can be simply implemented in a manner consistent with the use of pencil and paper.

9. Rejection of claims 1-25 under 35 USC 112, first paragraph, is withdrawn.

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10. Applicant's arguments filed on July 21, 2004 related to rejection of claims 1-25 under 35 USC 102(e) have been fully considered but are not persuasive.

In reference to Applicant's argument:

The Office action asserts that the "user" of Suzuki's system is the customer, because the sales clerk is an aid to the user/customer (Office action, page 11, lines 2-4). The applicant respectfully disagrees with this characterization of Suzuki's system, based on the expressly stated purpose of Suzuki's invention, which is to ease the sales clerk's tasks, while potentially increasing sales.

Examiner's response:

From Office Action dated April 21, 2004, page 10, lines 17-22 and page 11, lines 1-7, "Para 13 above applies. Suzuki teaches a system and method for tracking and recognizing merchandise items taken into a fitting room by a customer for providing more efficient customer assistance (**Suzuki**, abstract). Suzuki does not teach "user" or "salesperson" but does teach store clerk and customer. The applicant does not define the term "user." Figure 1 illustrates Suzuki's system/method which is further explained in the related text (**Suzuki**, c 5, l 7-40). It is axiomatic that the reason for or purpose of a system or method is to satisfy something or someone. Commerce is all about customers and their satisfaction. Hence, Suzuki anticipates customer satisfaction as the reason for the Suzuki system/method establishing **the customer as the user of the system/method**. The store clerk is the aid to the user or customer. For sure, there is no reason for having the Suzuki system/method if there are no customers or users. Suzuki's anticipates the customer as the user aided by a store clerk (Suzuki, c1, l 13-14). The Suzuki anticipates the applicant's user-system."

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In reference to Applicant's argument:

Further, assuming in argument that Suzuki's "user" is the customer, Suzuki's invention does not provide a recommended piece of clothing from the user's inventory. Suzuki's invention provides a recommended piece of clothing for the user to buy, to potentially add to the user's inventory. Suzuki provides a recommendation from a store's inventory, and does not provide a recommendation for a recommended piece of clothing from a user's inventory, as specifically claimed in each of claims 1 and 2, upon which claims 3-7 depend.

Assuming further in argument that the optional customer profile provides information that can be considered to be the user's inventory of apparel, based on past sales, providing a recommendation for an item that the user already has in his/her inventory would be contrary to the expressed purpose of Suzuki's sales system.

Examiner's response:

As established above, Suzuki does not teach "user" or "salesperson" and Suzuki anticipates customer satisfaction as the reason for the Suzuki system/method establishing the customer as the user of the system/method. Suzuki does indeed provide recommendations from the inventory for the user of the system to buy (Suzuki, c 1, l 12-37).

In reference to Applicant's argument:

Claim 8 specifically recites: "sending an identifier of the clothing product to the user". As noted above, Suzuki teaches sending messages to a sales clerk while a customer is in a fitting room. The Office action asserts that sending information to a sales clerk is equivalent to sending the information to a customer. The applicant respectfully disagrees, based on the inherent differences between a sales clerk and a customer, and particularly their different roles and objectives in a sales environment.

Examiner's response:

Para 13 applies. The applicant fails to understand the role of a salesperson which is to render advice to customers in a more effective and efficient manner (Suzuki, c7, l7-9). The salesperson is not the end of the line in the receipt of information. The salesperson has a function as Suzuki so states. Claim 8 is very general and facilitates such an interpretation.

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In reference to Applicant's argument:

In claims 11 and 16, upon which claims 12-15 and 17-25 depend, the applicant claims a method and system for determining subsets of clothing from an inventory of apparel possessed by a user for forming a recommended ensemble from the inventory.

Suzuki does not teach forming ensembles from clothing in a user's inventory. As noted in the applicant's prior remarks, forming an ensemble from clothing in a user's inventory is contrary to the expressed intent of Suzuki, because if the ensemble is formed from the user's inventory, the user has no need to purchase additional items via Suzuki's sales aid.

In response to the applicant's remarks, the Examiner asserts; "Suzuki at c 8, 143-57, identifies the ensemble that was purchased-therefore an ensemble had to be recommended and of course it would have to fit the customer's inventory... interest-or the customer would not have made the purchase." (Office action, page 15, last 4 lines, ellipses in the original). The applicant respectfully disagrees with this assertion, and respectfully note that even if this assertion were supportable, the use of the term "inventory" in this assertion is contrary to the definition of inventory as conventionally used and as used in the applicant's claim. Webster defines "inventory" as: "an Itemized list of current assets, as (1) a catalog of the property of an individual or estate (2) a list of goods on hand. The applicant claims "an inventory of apparel possessed by the user", and determining "one or more subsets of apparel from the inventory". An item is not in a person's inventory of apparel until and unless the person purchases it. Thus, providing a recommendation for a purchase of an item to be added to a person's inventory is not equivalent to providing a recommendation of items from the inventory.

The applicant further notes that Suzuki is silent with regard to forming an ensemble, and the Examiner's assertion that "Suzuki at c 8, 143-57, identifies the ensemble that was purchased" is erroneous. In the context of this invention, Webster defines an "ensemble" as "a complete costume of harmonizing or complementary pieces". Suzuki teaches maintaining a record of the customer's prior purchases. A collection of prior purchases does not necessarily form an ensemble, nor are all items purchased to form a recommended ensemble, as asserted by the Examiner.

Examiner's response:

Office Action of April 21, 2004 appropriately addresses claims 11 and 16 on page 7. The entire quote from page 15 and 16 of the related office action is: "Para 13 above applies. The Examiner has full latitude to interpret each claim in the broadest reasonable sense. See above discussion concerning "customer." Suzuki at c 8, 143-57, identifies the ensemble that was purchased...therefore, an ensemble had to be recommended and of course it would have to fit the customer's inventory...interest... or the customer would not have made the purchase. Such information is displayed by Suzuki in Fig. 9 and described at c 8, 143-57. Further and as noted in Suzuki's

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abstract: "...the recommendation information is also based on the customer's profile and past trial and purchase history information."... or in other words, the customer's inventory. Suzuki' anticipates the applicant's invention." The applicant must fully accept that it is the Examiner's obligation to interpret the claims in the broadest reasonable manner. Applicant agrees that a collection of prior purchases is a form of an ensemble.

Examination Considerations

11. The claims and only the claims form the metes and bounds of the invention.

"Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, I 45-48; p 2100-9, c 1, I 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

12. Examiner's Notes are provided to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and

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unless otherwise stated, the Examiner's Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

13. Examiner's Opinion: Paras 11. and 12. apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

Conclusion

14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

15. Claims 1-25 are rejected.

Correspondence Information

16. Any inquiry concerning this information or related to the subject disclosure should be directed to the Examiner, Joseph P. Hirl, whose telephone number is (703) 305-1668. The Examiner can be reached on Monday – Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anthony Knight can be reached at (703) 308-3179.

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,
Washington, D. C. 20231;

or faxed to:

(703) 746-7239 (for formal communications intended for entry);

or faxed to:

(703) 746-7290 (for informal or draft communications with notation of "Proposed" or "Draft" for the desk of the Examiner).

Note: During the last two weeks of October 2004, Art Unit 2121 will move to Carlyle, Randolph Building, 5th floor and my phone and fax number will change to: 571-272-3685 and 571-273-3685, respectively. Similarly, Anthony Knight's phone and fax numbers will change to: 571-272-3687 and 571-273-3687.


Joseph P. Hirl


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